

Mortgage Foreclosure Trial Court Assistance Project – Mediation Portal Project

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Introduction and Background:

Concerned about the record number of foreclosures in Indiana, and troubled by instances of unresponsiveness from some lenders and servicing agents, the Indiana General Assembly passed Senate Enrolled Act 492, now codified at I.C. 32-30-10.5 *et seq.* Two key portions of the new statute are a \$50 filing fee for new mortgage foreclosure actions filed after July 1, 2009 and the requirement for settlement conferences between the borrower and an individual representing the lender with settlement authority.

But according to the Indiana Housing and Community Development Authority (IHCDA), of the approximately 300 conferences which occurred between July and December 2009, most were unsuccessful because one or both parties were unprepared. Homeowners failed to bring the necessary documents, or had not prepared a budget and were unaware of the maximum monthly amount they were able to pay; lenders sent entry-level employees who had no real authority to agree to any mortgage changes. A clear need existed for more organization between the parties – there was no standard process coordinating the local pro bono commissions, courts, lenders, and homeowners.

In order to address this need, the Division of State Court Administration (STAD) partnered with the IHCDA in early 2010 to create a system for coordinating all settlement conferences on a county or district-wide basis. The basic structure of the project was: A project manager (PM) engaged by STAD to oversee local logistical coordinators (LCs) and/or facilitators, who coordinate with pro bono attorneys, homeowners, and lenders to schedule and take part in settlement conferences.

This new program has proven to be more successful, but communication issues persist with the parties still failing to exchange the proper documents and communications in order to make settlement conferences more productive. As a result, valuable resources continue to be strained without producing the expected and hoped-for results.

In an effort to solve this problem, STAD, in conjunction with IHCDA, is unveiling a new secure online portal system (Portal) to enable servicers and their local counsel to better and more effectively communicate with borrowers and their representatives regarding their mutual loss mitigation efforts. The Portal may be accessed at the following URL: www.dclmwp.com. The aim of the Portal is to facilitate the exchange of required documents and provide a direct channel of communications between all of the stakeholders. By doing this, the hope is that mediation sessions will become more efficient and productive and lead to more resolutions in less time.

The Portal will initially be rolled out as a pilot program with St. Joseph and Marion Counties and one default law firm – Feiwell & Hannoy P.C. – with the goal of getting other counties and other default law firms on the Portal by August 1, 2011.

Members and Roles:

Default Counsels (“DCs”):

DCs represent servicers locally and are the primary point of initial contact. DCs will initiate contact on the Portal. DCs will be responsible for filing the record of foreclosure filing on the Portal within 3 days after the date on which the foreclosure filing is made with the Court. DCs will provide the following information on the Portal:

- Borrower and Co-Borrower (if any) names
- Last known mailing address of Borrower
- Property address
- Borrower phone numbers (if known)
- Name of mortgage servicer
- Lien priority
- Loan Number
- Bankruptcy information if bankruptcy has been filed
- Foreclosure jurisdiction
- Docket Number

In addition, if a Settlement Conference is requested and ordered, the DC will upload all of the required documents on behalf of the servicer and notify the Counselor/Pro Bono Attorney designated by the Court that the DC is prepared to receive Borrower’s documents through the Portal. Once documents are received by the DC, the DC will advise whether the package is complete. If there are deficiencies with the submission, the DC will advise what those deficiencies are. The goal is to have the DC verify that a complete package has been received **before** the settlement conference.

Facilitators/LCs:

In addition to the Facilitator’s/LC’s role in helping the parties come to a mutually-satisfactory agreement, if at all possible, the Facilitator/LC will supervise the exchange of documents and communications between the DC and Borrower (and their representative). The Facilitator/LC will also be the point person who will receive notice of all new mediation filings on the Portal and will use that e-filing to better coordinate mediation efforts.

Counselors and Pro Bono Attorneys:

Counselors and/or Pro bono attorneys will be engaged by the Facilitator/LC when the Borrower requests a settlement conference. If the Facilitator/LC believes that the borrower is in need of legal assistance at the settlement conference, pro bono attorneys will be engaged; otherwise, the borrower will be referred to a counselor. The attorneys/counselors will assist the borrower in compiling all of the requisite information and documentation and submitting their package to the DC through the Portal for review. If necessary, the attorneys/counselors will also prepare the borrower for a settlement conference and attend the conference.

Default Mitigation Management LLC (DMM):

DMM owns and operates the Portal. DMM will provide training for all participants on the Portal as required.

Basic Procedures:

The Portal process will begin with the DC electronically filing a record of a new foreclosure on the Portal. The filing will have to be made within 3 days of the foreclosure filing with the Court. An automatic e-file notification will be delivered to the Court designated Facilitator/LC. The Facilitator/LC will then contact the Borrower to determine if the Borrower wishes to have a settlement conference. If the Borrower declines, the Servicer may proceed with foreclosure. If, however, the Borrower does request that a settlement conference be held, then the Facilitator/LC will refer the Borrower to an IFPN housing counselor (or, if the situation warrants, a pro bono attorney). The Court will then issue an Order requiring a settlement conference. The DC will notify the designated counselor through the Portal and provide them with a unique invitation code to download the borrower's record. The Portal will list all of the required documents that the borrower must submit. Borrower will make contact with the counselor and work with the counselor to complete all of the required documentation and upload it to the Portal account created by the DC.

After the counselor uploads Borrower's package to the Portal, the Portal will automatically notify the DC that Borrower package has been delivered. DC will review said package and notify the counselor whether the package is complete and ready for review. In the event that the DC advises that the package is not complete, DC will describe in detail the deficiencies of the submission and notify the counselor through the Portal. The counselor will then endeavor to cure any deficiencies noted and resubmit a complete package through the Portal.

Prior to the settlement conference, the parties may continue to engage each other on the Portal in an effort to resolve the loan default. It is the goal of the Portal to ensure that at a minimum, the parties have exchanged all of the requisite documentation prior to the settlement conference and if possible, facilitate the communication necessary for the servicer to make a decision regarding the borrower's loss mitigation request. The Court/Facilitator/LC will have access to the online record on the Portal and be able to review and confirm the status of any ongoing review.

Funding:

Funding the Portal Pilot project will be paid for by the DC which will pay a \$25 filing fee directly to DMM for each e-filing completed on the Portal.

Any questions, comments, or suggestions may be directed to:

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The Mortgage Foreclosure Task Force website is located at <http://www.in.gov/judiciary/admin/mortgage>.
The DMM Loss Mitigation Web Portal is located at <https://www.dclmwp.com>.